

Additional Information on Certain Authorities for 202 FW 1

A. The Federal Register Act (FRA) (44 U.S.C., Chapter 15). The basic requirements of the FRA include, among other things:

(1) Federal agencies must transmit three copies [three signed originals, or one signed original and two certified copies (see Definitions, 202 FW 1.6)] of documents for filing with the Office of the Federal Register (OFR) of the National Archives and Records Administration. Following review, OFR makes one copy available for public inspection, transfers one copy to the Government Printing Office (GPO) for publication in the Federal Register, and keeps one copy for the National Archives.

(2) Documents published in the Federal Register include documents that the President determines have general applicability and legal effect, all documents that set penalties, and documents required to be published by Congress.

(3) Until a Federal agency files copies of a document with the OFR and makes a copy available for public inspection, it is not in effect. People cannot be held responsible for complying with a document if they have no knowledge of it. By publishing a document in the Federal Register, we can prove that we issued, prescribed, or promulgated the document.

(4) In general, you must publish notices of hearings not less than 15 days before the hearing.

(5) OFR officials prepare and publish the Code of Federal Regulations (CFR). The CFR is a complete codification of regulations that have published in the Federal Register. To keep the CFR as current as practicable, OFR either supplements or collates and republishes each book of the CFR at least once each calendar year.

(6) The CFR, as amended by documents filed with OFR and published in the daily issues of the Federal Register, is adequate evidence of the text of the documents and of the fact that they are in effect on the effective date stated in the final rule.

B. The Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.). The basic requirements of section 553, which is the section on informal rulemaking, say that Federal agencies must:

(1) Publish proposed rules in the Federal Register. Notices of proposed rulemaking must include:

(a) A statement of the time, place, and nature of public rulemaking procedures,

(b) Reference to the legal authority under which the rule is proposed, and

(c) Either the terms or substance of the proposed rule or a description of the subjects and issues involved.

(2) Give those interested an opportunity to participate in the rulemaking by allowing them to submit written data, views, or arguments, with or without opportunity for oral presentation.

(3) After considering all comments received, publish final rules in the Federal Register and include a concise general statement about why we wrote them and what their purpose is.

(4) Allow at least 30 days following publication of a final rule before it becomes effective, except in the following cases:

- (a) A substantive rule that grants or recognizes an exemption or relieves a restriction;
 - (b) Interpretative rules and statements of policy; or
 - (c) As otherwise provided by the agency for good cause found and published with the rule.
- (5) There are exceptions to the APA requirements described above. Except when a statute requires a notice or hearing, section 553 does not apply:
- (a) To interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or
 - (b) When the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.
 - (c) In situations involving U.S. military or foreign affairs functions; agency management or personnel; or public property, loans, grants, benefits, or contracts.
- C. Congressional Review Act (CRA)** (Public Law 104–121). The CRA, part of the Small Business Regulatory Enforcement Fairness Act of 1996, allows Congress 60 days to review all new Federal regulations and, with passage of a joint resolution (with Presidential signature), to overrule a regulation. In addition, the Government Accountability Office (GAO) provides a report on each new major rule to Congressional committees whose purview includes that new regulation.
- D. Executive Order (E.O.) 12866, Regulatory Planning and Review**. E.O. 12866 outlines steps that executive branch agencies must follow before the regulations they issue take effect. For all regulations, you must perform cost-benefit analysis. Regulations with an estimated cost of \$100 million or more are “major rules” and require us to complete a Regulatory Impact Analysis (RIA). The RIA must justify the cost of the new regulation, and OMB must approve it before it takes effect. E.O. 12866 also requires all regulatory agencies to prepare and submit material for the Regulatory Plan and Unified Agenda, the purpose of which is to establish regulatory priorities and improve coordination of the Administration's regulatory program. [For more information, see 202 FW 2.3(A).]